

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

JUSTIN BRAUNING,

Petitioner,

-VS-

CASEY HAMILTON,

Respondent.

Case No. CIV-21-878-F

## ORDER


Petitioner, Justin Brauning, a state prisoner appearing *pro se*, commenced this action by filing a petition for a writ of habeas corpus under 28 U.S.C. § 2254. The court referred the matter to United States Magistrate Judge Amanda Maxfield Green in accordance with 28 U.S.C. § 636. After conducting a preliminary review of the § 2254 petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, Magistrate Judge Green issued a Report and Recommendation, recommending the court abstain from exercising jurisdiction pursuant to Younger v. Harris, 401 U.S. 37 (1971), and dismiss petitioner's § 2254 petition without prejudice.

Magistrate Judge Green advised petitioner of his right to file an objection to the Report and Recommendation by October 20, 2021, and further advised petitioner that failure to timely object would waive the right to appellate review of both factual and legal issues therein contained. To date, petitioner has neither filed an objection to the Report and Recommendation nor sought an extension of time to file one. With no objection being filed within the time prescribed by Magistrate Judge Green, the court accepts, adopts, and affirms the recommended ruling.

Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts requires the court to issue or deny a certificate of appealability when it enters a final order adverse to the petitioner. When, as here, the court's adverse decision rests on procedural grounds, the court will not issue a certificate of appealability unless the petitioner shows: "[ (1) ] that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right; and [ (2) ] that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000). The court, upon review, finds that petitioner cannot make the required showing. Therefore, the court denies a certificate of appealability.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Amanda Maxfield Green on September 29, 2021 (doc. no. 7) is **ACCEPTED, ADOPTED** and **AFFIRMED**. The Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody (doc. no. 1) filed by petitioner, Justin Brauning, is **DISMISSED WITHOUT PREJUDICE**. A certificate of appealability is **DENIED**.

IT IS SO ORDERED this 3<sup>rd</sup> day of November, 2021.

  
STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE